IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1311 OF 2006
WITH
CIVIL APPLICATION STAMP NO. 8876 OF 2006

Smt. Mona Mukund Vaidya and ors. ..Petitioners

Vs.

Shri Ramesh Manilal Shah and ors. ..Respondents

Mr. R.V. Pai with Mr. S.S. Kulkarni for petitioners.
Mr. P.N. Joshi for respondent nos.1 to 6.

CORAM: B.H. MARLAPALLE, J.

Date : August 8, 2006.

P.C.:

1. Heard the learned Counsel for the respective parties.

2. Rule. Rule is taken up for final hearing forthwith.

3. This petition arises from the order dated 18/2/2006 passed by the learned 1st Ad-hoc Additional District Judge at Nashik allowing Civil Misc. Appeal No.100 of 2005 thereby setting aside the order of status quo passed by the trial court on 5/7/2005 and

directing the defendants not to disturb or obstruct the plaintiffs' possession over the suit land in Survey No.473/A1 admeasuring 3 Acres and 27 Gunthas situate at Untawadi, Nashik.

4. The respondents filed Special Civil Suit No.85 of 2002 for the specific performance of the agreement for sale dated 20/7/1981 singed between them and predecessor of the defendants and also for declaration. In the said suit an application for interim stay at Exh.20 was filed and it came to be disposed off by the trial court on 5/7/2005 by directing both the parties to maintain status quo in respect of the suit property during the pendency of the suit. In appeal, the learned 1st Ad-hoc Additional District Judge, Nashik did not agree with the view taken by the trial court and he proceeded to hold that the plaintiffs had prima facie made out a case that they were put in possession of the suit property pursuant to the agreement for sale dated 20/7/1981.

5. The defendants in the present suit, prior in time, approached the learned Civil Judge, Senior

Division at Nashik by filing Regular Civil Suit No.118 of 1993 for declaration that the said agreement for sale is illegal, null and void and not binding on them. This suit was dismissed on the preliminary point on 21/8/1995 and, therefore, the plaintiffs filed Civil Appeal No.333 of 1995 which came to be allowed by the learned Additional Sessions Judge, Nashik on 18/12/2003. The suit was directed to be decided as early as possible and in any case by the end of July 2004. The trial court while dealing with the application at Exh.20 filed in Special Civil Suit No.85 of 2002 noted that prima facie there were no documents to show that the plaintiffs were put in possesion of the suit land which is an open plot, pursuant to the agreement for sale which is a subject matter of challenge in the suit filed by the plaintiffs i.e. Regular Civil Suit No.118 of 1993 and, therefore, when both the parties were claiming to be in possession of the suit land, the learned trial judge thought it appropriate to direct them to maintain the status quo more so when the land is located within Corporation limits of Nashik. The trial court also noted that either the entire suit land or part of it was a land declared as surplus

under the Urban Land Ceiling Act and, therefore, the contentions of the defendants that it could not be alienated and, hence, the agreement for sale was on the face of it is illegal document, were also noted.

6. The learned Judge of the Lower Appellate Court has relied upon some of the documents like private security bill from January 2005, electricity bill produced on record by Shri R.M. Shah which indicated that the electricty meter was in his name and the expenditure incurred for putting chain fencing. The agreement for sale is signed on 20/7/1981 and the plaintiffs i.e. the present respondents filed the suit on or about 22/3/2003 i.e. after about 22 years. Both their vendors are no more and, in fact, the present defendant's husband who is impleaded as the second defendant in the suit filed prior in time i.e. RCS No.118 of 1993 died in the year 1998 and the plaintiff's claim that in the year 1999 he issued notice to the defendants calling upon them to execute a power of attorney in favour of the defendant no.1 and that is how cause of action arise. On these obtaining circumstances, it was not permissible for the Lower Appellate Court to disturb the order of

status quo passed by the trial court and it, in fact, was an equitable order. Unless the Lower Appellate Court was satisfied that the findings recorded by the trial court were perverse or not supported by the documents placed on record, there was no scope for the Lower Appellate Court to hold that the plaintiffs were in possession of the suit property which is an open plot of land.

7. Civil Application Stamp No.8876 of 2006 has been filed for handing over suit land to the Court Receiver. This will have to be considered by the tirla court, if so desired.

8. Hence, this petition succeeds and the same is hereby allowed. The impugned order is hereby quashed and set aside and the order of status quo passed by the trial court is hereby restored and the application at Exh.20 filed by the plaintiffs stands disposed accordingly. Trial of Special Civil Suit No.85 of 2002 is hereby clubbed with the trial of Regular Civil Suit No.118 of 1993 and the trial of both the suits is hereby expedited. The suits will be heard and decided by the learned Civil Judge, Senior Division at Nashik

preferably by 31st May, 2007 and in the meanwhile, if any of the party apply to hand over the suit property to the court receiver, such an application shall be considered on its own merits but in any case without delaying the trial.

9. Rule made absolute accordingly. No costs.

10. In view of the above, Civil Application under Stamp No.8876 of 2006 does not survive and disposed as such.

(B.H. Marlapalle,J.)